

fasting Sunday. Whereunto the master answered, That he was also sore spuilied himself that day for not putting out of a footman; it being the tenant's fault, who should have put him out. The Lords assigned a short term to the suspender to prove that which was *in fact*, and to liquidate the prices; or, if he had rather, more terms to prove his spuilie. The Lords found the letters orderly proceeded for the master.

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1649. June 28. GILBERT HARDIE *against* HAMILTOUNE and POOLLE.

IN the advocation at Gilbert Hardie his instance, of an action of removing at the instance of Hamiltoune and Poolle against him before the town of Edinburgh,—there was a reason of suspected partiality, one of the bailies threatening Hardie, that he should be decerned to remove, and the assessor being the drawer up of the pursuer his allegiance and replies; and, farther, the matter dipping upon the discussing of double tacks, specially where the user of the advocation craved only to set while Martinmas or less, that he might get his wine and beer sold, otherwise he would be altogether ruined. Some inclined to try upon what conditions the tack pretended by Hardie was consigned in Jacob Nicolsone his hand, and so would have had it advocated. But others prevailed, that it should be remitted, because that might delay time, which was precious; for the great confluence of people now before Lammas, and advocations, in Removings, are important in the town of Edinburgh: yet recommended to the town to be gentle and tender herein towards their burghess, Hardie, whose credit hinges upon his change.

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1649. June 28. WIDOW WALLACE *against* —————.

IN the action for a terce, at the instance of Widow Wallace, furth of her husband his land of the Cannongate,—it was excepted, That all burgh lands ought to be free, and ought to have the like freedom. It was replied, That, by the old laws, the word burgh is only to be understood of burghs royal; who have that privilege, as it would seem, because they were almost merchants and tradesmen who dwelt therein, and did leave their dwelling-house to their heir; as the chief messuage in landward is likewise thought to be *præcipuum*: and that, out of the moveables, the relict might have a competent third. It was duplied, That the burghs of regality and of barony are of a like nature, the inhabitants having collected themselves to dwell together for mutual defence. And what is *privilegiatum* to the burghs royal, as, to vote in Parliament, to sell wine and wax, &c. those particular exceptions, by the Acts of Parliament, *firmiter regulam in omnibus casibus non exceptis*; and so they take infestment by hasp and staple, in the regals as in the royals. Likeas the custom has never been of seeking such a terce, albeit Anna Hay got it in the Cannongate,—the Raes, her good-sisters, not willing to oppose her for their own reasons; *quod unicum*

*exemplum in jure per contradictionem non contraversum, non trahendum est in consequentiam.* And I think the terce usually kened by sunny side and shadow *in prediis rusticis*. I scarce can see that kenning can be designed *in urbanis prediis*; or see I what may be the inconvenient in setting the two part and third. *Vide L. Burgenses*, anent the flat, *et de interiore domus parte*, appointed to the widow of a burgesse. Howsoever, Repelled the answer and duply.

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1649. June 28. GAWIN SYMPSONE *against* HILL and PUNTOUNE.

IN the process at Gawin Sympsone his instance against Hill and Puntoune,—it was excepted chiefly by Robert Hill, That he could not build a house in that his waste, lest he should wrong the said Robert his lights. To the which it was replied, That the pursuer might build on his own ground as high as he liked, if the defender were not able to show, that he had such a servitude, *ne altius tolleretur aut luminibus officeret*. Which the Lords sustained.

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1649. June 29. The TENANTS of GOLDENHOOVE *against* COLONEL RAE.

IN the action of retention, for maintenance, quartering, &c. at the instance of the tenants of Goldenhoove, against Colonel Ræe, their master, it was excepted, That, by virtue of a clause contained in their tack accepted by them, they should undergo all taxations, impositions, and burdens, and free their master of the same; they could not have retention for the years within their tack, to this time: especially seeing the duty was the same in a former tack, wherein a clause of services therein contained, was, in the posterior, remitted; and, by the clause above specified, as it were innovated: considering also, that the duty of the tack was within the avail. They replied upon the Act anent liferenters, of the 6th session of the 1st triennial Parliament, 1646. But the Lords found that they did not meet, in respect there was a posterior act of maintenance concerning the relief of tenants, in remitting the trial of the worth of lands, and the comparing the same, with the duty paid to the committee of war within the shire; which thir tenants had neglected. The Lords ordained the master to relieve preceding the tacks, conform to the order then standing, and noways during the time of the tack run; and, for the time to come, gave power to the tenants to renounce their tack if they pleased.

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1649. June 29. The EXECUTORS of JAMES BARNES *against* ROBERT MASTER-TOUNE.

IN the action of suspension and reduction at the instance of the executors of